



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Docket No. 22-25
Michael Simental, M.D.
Decision and Order**

On January 24, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Michael Simental, M.D. (hereinafter, Applicant). OSC, at 1, 3. The OSC proposed the denial of Applicant's application for a Certificate of Registration No. W20129943C at the proposed registered address of 4201 Torrance Boulevard, Suite 590, Torrance, California 90503. *Id.* at 1. The OSC alleged that Applicant's application should be denied because Applicant is "without authority to handle controlled substances in California, the state in which [he has] applied to be registered with DEA." *Id.* at 2 (citing 21 U.S.C. § 824(a)(3)).

By letter dated May 11, 2022,¹ Applicant requested a hearing. On May 12, 2022, Administrative Law Judge Teresa A. Wallbaum (hereinafter, the ALJ) issued an Order Directing Government to File Evidence of Service of the Order to Show Cause and Evidence of Lack of State Authority. On May 26, 2022, the Government filed its Notice of Filing of Evidence and Motion for Summary Disposition (hereinafter, Motion for Summary Disposition). On June 6, 2022, Applicant filed his Response to Government's Notice of Filing of Evidence and Motion for Summary Disposition (hereinafter, Response).²

On June 7, 2022, the ALJ granted the Government's Motion for Summary Disposition and recommended the denial of Applicant's application, finding that because Applicant lacks state authority to handle controlled substances, there is no genuine issue of material fact. Order

¹ The record demonstrates that service was not accomplished until April 10, 2022 and the Government does not contest the timeliness of the request for a hearing. Motion for Summary Disposition, at n.2.

² In his Response, Applicant did not dispute that he lacks state authority nor did he otherwise oppose the denial of his application, but rather, Applicant indicated that he had "misguidedly applied for a DEA COR during the pendency of disciplinary proceedings before the Medical Board of California" and had "requested a hearing in the instant matter to see if the withdrawal of his application for a COR could be accomplished." Response, at 1.

Granting the Government’s Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, Recommended Decision or RD), at 6.³

The Agency issues this Decision and Order based on the entire record before it, 21 C.F.R. § 1301.43(e), and makes the following findings of fact.

FINDINGS OF FACT

On May 20, 2021, the Medical Board of California entered a Cease Practice Order against Applicant that prohibited him from engaging in the practice of medicine until “a final Decision [had] been issued on an Accusation and/or a Petition to Revoke Probation filed pursuant to [the] [underlying] matter.” Government Attachment 1, Exhibit A. According to California’s online records, of which the Agency takes official notice, Applicant’s state medical license was surrendered.⁴ Medical Board of California License Verification, <https://www.mbc.ca.gov/License-Verification> (last visited date of signature of this Order). Accordingly, the Agency finds that Applicant is not licensed to engage in the practice of medicine in California, the state in which he is registered with the DEA.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to

³ By letter dated July 5, 2022, the ALJ certified and transmitted the record to the Agency for final agency action and advised that neither party filed exceptions.

⁴ Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Applicant may dispute the Agency’s finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).⁵

According to California statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Cal. Health & Safety Code § 11010 (West 2022). Further, a “practitioner” means a person “licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state.” *Id.* at § 11026(c).

Here, the undisputed evidence in the record is that Applicant lacks authority to practice medicine in California. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Applicant lacks authority to practice medicine in California and, therefore, is not authorized to handle controlled substances in California, Applicant is not eligible to receive a DEA registration. Accordingly, the Agency will order that Applicant’s application for a DEA registration be denied.

ORDER

⁵ This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny the pending application for a Certificate of Registration, Control Number W20129943C, submitted by Michael Simental, M.D., as well as any other pending application of Michael Simental, M.D., for additional registration in California. This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

SIGNING AUTHORITY

This document of the Drug Enforcement Administration was signed on July 26, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Heather Achbach,
Federal Register Liaison Officer,
Drug Enforcement Administration.

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